

IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1942

**WILLIAM DUDLEY PELLEY,**  
Petitioner and Appellant Below,  
vs.

**UNITED STATES OF AMERICA**  
Respondent and Appellee Below.

**LAWRENCE A. BROWN,**  
Petitioner and Appellant Below,  
vs.

**UNITED STATES OF AMERICA,**  
Respondent and Appellee Below.

**FELLOWSHIP PRESS, INC.,**  
Petitioner and Appellant Below,  
vs.

**UNITED STATES OF AMERICA,**  
Respondent and Appellee Below.

**JOINT AND SEPARATE PETITION FOR A WRIT OF  
CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SEVENTH CIR-  
CUIT AND BRIEF IN SUPPORT THEREOF**

**OSCAR F. SMITH,**  
108 E. Washington Street,  
Indianapolis, Indiana;

**FLOYD G. CHRISTIAN,**  
19½ E. Logan Street,  
Noblesville, Indiana;

*Counsel for Petitioners.*

Office - Supreme Court, U. S.

FILED

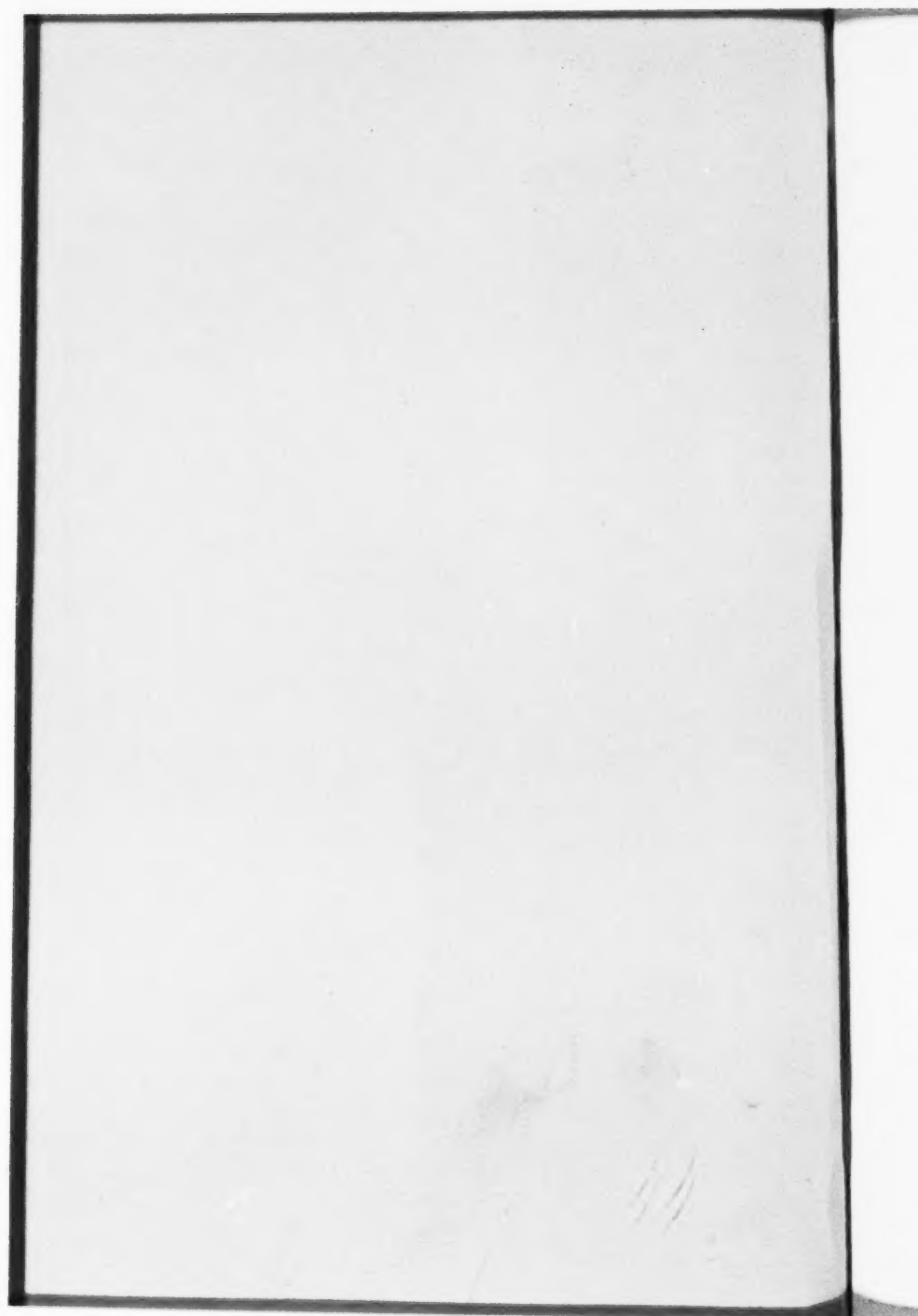
JAN 12 1943

CHARLES CLARK SHIPLEY  
CLERK

318 US #33  
PELLEY QUAY

No. 640

No. 647



## SUBJECT INDEX

	Page
PETITION FOR WRIT OF CERTIORARI.....	1-15
Jurisdiction .....	4
Prayer for the Writ.....	14-15
Reasons relied upon for the allowance of the Writ...	5-14
Summary statement of the case.....	2-4
Statute of June 30, 1906 (Chap. 3935) is unconstitutional .....	8-10
BRIEF IN SUPPORT OF PETITION.....	16
Appendix .....	57
Opinions of the Courts below.....	16-18
Jurisdiction .....	18
Statement of the case .....	18
Specifications of Errors.....	18
Argument .....	22-55
(a) The Court below erred in its decision upon the Pleas in Abatement herein for the reasons:	
(1) Women were erroneously excluded from the grand jury which returned the in- dictment in this case .....	22-29
(2) Unauthorized persons were permitted to appear before the grand jury; present- ing a constitutional question.....	29-33
(b) Sufficiency of the Indictment.....	33
(1) The Court below erred in its decision as to the sufficiency of the Indictment.	33-43
(c) The Court below erred in failing to decide whether or not petitioners were entitled to a Bill of Particulars.....	43-45
(d) The Court below erred in its decision as to the admissibility of certain evidence.....	45-55
(e) Conclusion .....	55

## INDEX OF AUTHORITIES

	Page
Ackley v. United States, 200 Fed. 217.....	11
Armour Packing Co. v. United States, 209 U. S. 58, 28 S. C. 428 .....	11, 34
Arver v. United States, 245 U. S. 366, 38 S. C. Rep. 159..	7
Boyd v. United States, 142 U. S. 450, 12 S. C. 292.....	14
Chicago Co. v. Chicago, 166 U. S. 234, 17 S. C. Rep. 581..	7
Collenger v. United States, 50 Fed. (2d) 345.....	48
Collins v. United States, 253 Fed. 609.....	11, 38
Constitution of the United States, Amendment 5.....	7, 10, 28, 34, 55
Constitution of the United States, Amendment 6..	10, 34, 38
Constitution of the United States, Amendment 14....	8, 28
Constitution of the United States, Amendment 19.....	55
Constitution of the United States, Section 2, of Ar- ticle II .....	9, 30
Davis v. Wood, 1 Wheat. 6, 4 L. Ed. 22.....	14
Dealy v. United States, 152 U. S. 539, 14 S. C. 680.....	13
Duncan v. Missouri, 152 U. S. 377, 14 S. C. Rep. 570...	7
Evans v. United States, 153 U. S. 584, 14 S. C. 934...	11, 40
Ex Parte Bain, Jr., 121 U. S. 1, 7 S. C. 781.....	7, 25
Ex Parte Wilson, 114 U. S. 417.....	7, 24
Fish v. United States, 36 Fed. 677.....	9, 31
Fontana v. United States, 262 Fed. 283.....	11, 40
Foster et al. v. United States, 253 Fed. 481.....	10, 11, 12, 34, 35, 44
Frohwerk v. United States, 249 U. S. 204, 39 S. C. 251 .....	11, 35

# INDEX TO AUTHORITIES—(Continued)

	Page
Gitchell v. State, 146 Ill. 175, 33 N. E. 757.....	9
Glasser v. United States, 62 S. C. 457.....	5, 6, 23, 24
Griffin et al. v. United States (C. C. A. 3), 295 Fed. 437..	9
Hart v. United States, 240 Fed. 911.....	11, 42
Harvey v. United States, 126 Fed. 357.....	12, 42
Heike v. United States, 227 U. S. 131, 33 S. C. 226....	11, 42
Hill v. State of Texas, 62 S. C. 1159 (316 U. S. 400).....	
.....	5, 6, 8, 27
In re Petition for Special Grand Jury D. C., 50 Fed.	
(2d) 973 .....	23
Keck v. United States, 172 U. S. 434, 19 S. C. 254, 43	
L. Ed. 505 .....	11, 34
Kilbourn v. Thompson, 103 U. S. 168, 26 L. Ed. 377...9,	31
Kirbey v. United States, 174 U. S. 47, 19 S. C. 574...12,	43
Knauer v. United States, 237 Fed. 8, 150 C. C. A. 210... 11	
Latham et al. v. United States (C. C. A. 5), 226 Fed.	
420 .....	9, 32
Ledbetter v. United States, 170 U. S. 606, 18 S. C.	
774 .....	11, 40
Mackin v. United States, 117 U. S. 348, 6 S. C. Rep.	
777 .....	24
Martin v. United States, 168 Fed. 198, 93 C. C. A. 484.. 11	
Neal v. Delaware, 103 U. S. 370, 26 L. Ed. 567.....	7
New York R. R. v. United States, 212 U. S. 481, 29 S. C.	
304 .....	12, 43
Palmer v. State, 197 Ind. 625, 150 N. E. 917.....	6, 25
Parkinson v. United States, 121 U. S. 281, 7 S. C. Rep.	
896 .....	25
Peters v. United States, 94 Fed. 127.....	11, 35

# INDEX TO AUTHORITIES—(Continued)

	Page
Pierce v. United States, 252 U. S. 239, 40 S. C. 205.....	11
Schenck v. United States, 249 U. S. 47.....	35
Shidler v. United States, 257 Fed. 620.....	11, 37
Shilter v. United States, 257 Fed. 724.....	10
Shushan v. United States, 117 Fed. (2d) 110 (133 A. L. R. 1040) .....	10
Skelley v. United States, 37 Fed. (2d) 503.....	11, 35
Sloop v. People, 45 Ill. App. 110.....	9, 31
Smith v. State of Texas, 311 U. S. 128, 61 S. C. Rep. 164 .....	26
Swift & Co. v. United States, 196 U. S. 375, 25 S. C. 276 .....	35
Tynan v. United States (C. C. A. 9), 297 Fed. 177 (Cer- tiorari denied 266 U. S. 604).....	6
United States v. Bopp (D. C.), 230 Fed. 723.....	11
United States v. Carll, 105 U. S. 611, 26 L. Ed. 1135...	11
United States v. Cobban, 127 Fed. 713.....	31
United States v. Cruikshank, 92 U. S. 542, 23 L. Ed. 588 .....	10, 34, 38
United States v. Debs, 249 U. S. 211.....	35
United States v. Dembowski, 252 Fed. 894.....	37
United States v. Eastman, 252 Fed. 232.....	40
United States v. Edgerton, 80 Fed. 374.....	9
United States v. Germaine, 99 U. S. 508-511, 25 L. Ed. 482 .....	9, 30
United States v. Goldman, 28 Fed. (2d) 424.....	9, 42
United States v. Hall, 248 Fed. 150.....	39, 40, 41
United States v. Haskell, 169 Fed. 449.....	9

# INDEX TO AUTHORITIES—(Continued)

	Page
United States v. Heinze, 177 Fed. 770.....	9
United States v. Hess, 124 U. S. 483, 8 Sup. Ct. 571....	
.....	10, 34, 38
United States ex rel. Jordan v. Glass, 25 Fed. (2d)	
941 .....	12, 42
United States v. Kilpatrick, 16 Fed. 765.....	9, 31
United States v. Kissel, 173 Fed. 823.....	42
United States v. McDaniel, 7 Pet. 1, 8 L. Ed. 587.....	9, 31
United States v. Mitchell, 136 Fed. 896.....	9, 31
United States v. Murphy, 224 Fed. 554.....	23
United States v. Rintelen, 235 Fed. 787.....	9, 31
United States v. Rosenthal, 121 Fed. 862.....	10
United States v. Schulze, 253 Fed. 377.....	41
United States v. Schutte, 252 Fed. 212.....	40
United States v. Simmons, 96 U. S. 360, 24 L. Ed. 819...	11
United States v. Virginia-Carolina Chemical Co., 163	
Fed. 66 .....	10
United States v. Wells et al. (D. C. of Idaho C. D.),	
163 Fed. 313 .....	9
United States v. Winston, 170 U. S. 522, 18 S. C. Rep.	
701 .....	10, 25
Walter v. State, 208 Ind. 231, 195 N. E. 268.....	5, 6, 7
White v. United States, 67 Fed. (2d) 71.....	11
Williams v. State, 123 N. E. 209.....	9
Wong Tai v. United States, 273 U. S. 77, 47 Sup. Ct.	
300 .....	11-39
Wong Wing v. United States, 163 U. S. 228, 41 L. Ed.	
140, 16 S. C. Rep. 977.....	10

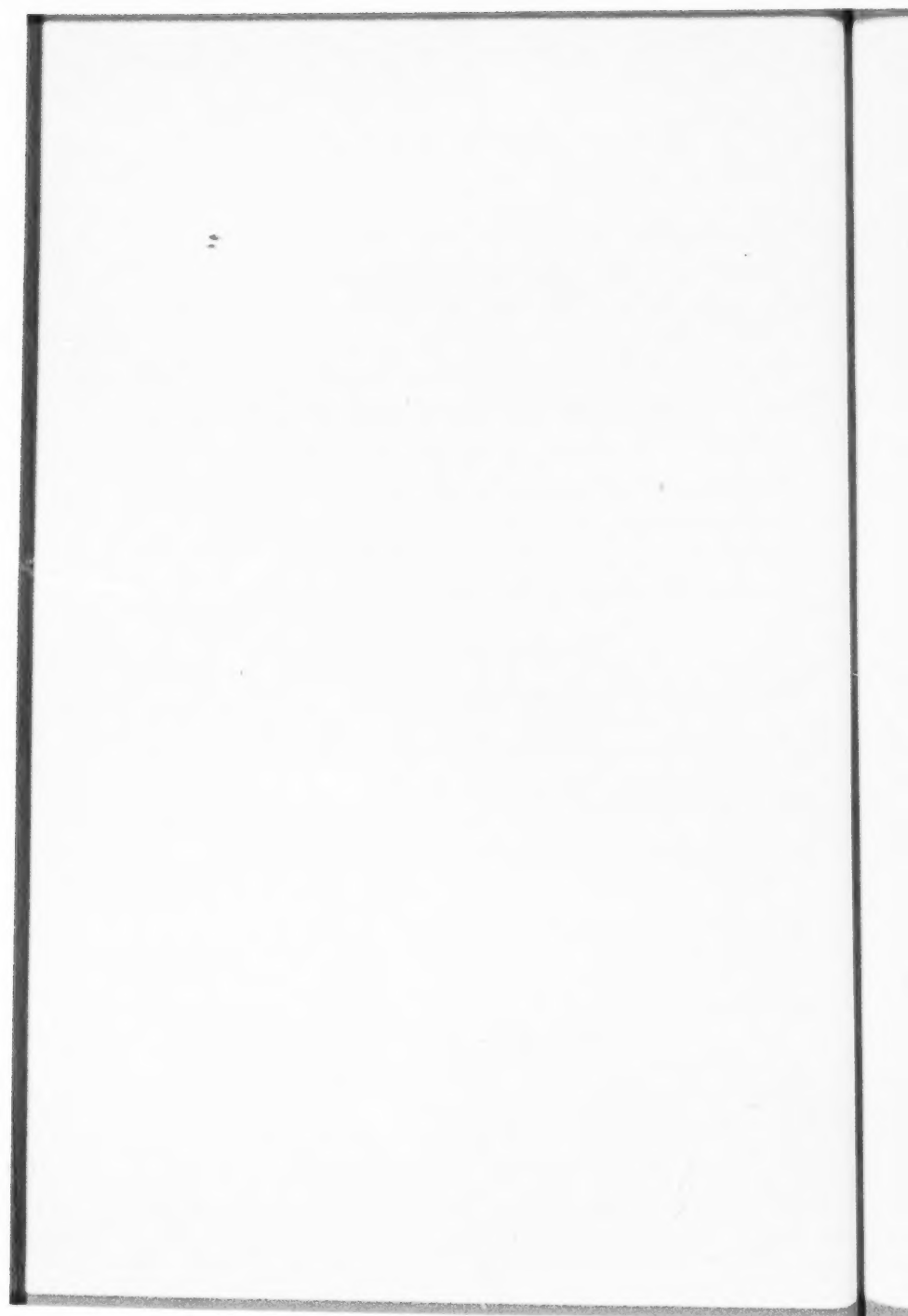
## STATUTES CITED

	Page
Indiana Statute, Burns' I. S. A. 1933, Sec. 4-3304....	6, 57
Indiana Statute, Burns' I. S. A. 1933, Sec. 4-3317...	5, 6, 57
United States Statute, 5 U. S. C. A. 291, Rev. Stat. 346 .....	9, 30
United States Statute, 5 U. S. C. A. 310 (34 Stat. 816).. .....	5, 8, 20, 33, 55
United States Statute, 5 U. S. C. A. 312 (Rev. Stat. Sec. 363) .....	10
United States Statute, 5 U. S. C. A. 315 (Rev. Stat. Sec. 366) .....	10
United States Statute, 8 U. S. C. A. Sec. 44.....	27
United States Statute, 28 U. S. C. A. Sec. 347, subdivi- sion a .....	4
United States Statute, 28 U. S. C. A. 411 (Judicial Code, Sec. 275) .....	2-5, 6, 23, 25
United States Statute, 28 U. S. C. A. 412 (Judicial Code, Sec. 276 Amended).....	2, 23
United States Statute, 28 U. S. C. A., Sec. 415 (21 Stat. 43) (36 Stat. 1165).....	5
United States Statute, 28 U. S. C. A. 485 (Rev. Stat. Sec. 771) .....	10, 31
United States Statute, 50 U. S. C. A. 33 (40 Stat. 219) (41 Stat. 1359) .....	12, 41
18 Stat. L. Pt. 3, p. 36.....	25



## TEXT BOOKS CITED

	Page
American Jurisprudence, Vol. 13, Secs. 864, 897, 908, 912 and 914 .....	12, 43
American Jurisprudence, Vol. 27, Sec. 55.....	12, 38
American Jurisprudence, Vol. 27, Secs. 57-58.....	39
Corpus Juris, Vol. 14A, Secs. 2073 and 3049 to 3057....	43
Corpus Juris, Vol. 22, Sec. 832.....	14
Corpus Juris, Vol. 22, Sec. 835.....	13
R. C. L. Vol. 6, pp. 441-446 inclusive.....	7
R. C. L. Vol. 10 (1929) Sec. 87.....	13
Underhill Criminal Evidence (1923) (3rd), Secs. 168, 187, 188 .....	14
Wharton's Criminal Evidence (1935), Vol. 1, Secs. 222 to 227 inclusive.....	13, 45
Wharton's Criminal Evidence (1935), Vol. 2, Sec. 711.	13, 45
Zoline's Federal Criminal Law and Procedure (1921), Vol. 1, Chap XXVI .....	12, 43



IN THE  
**SUPREME COURT OF THE UNITED STATES**

October Term, 1942

---

WILLIAM DUDLEY PELLEY,  
Petitioner and Appellant Below,

vs.

UNITED STATES OF AMERICA,  
Respondent and Appellee Below.

No. ....

---

LAWRENCE A. BROWN,  
Petitioner and Appellant Below,

vs.

UNITED STATES OF AMERICA,  
Respondent and Appellee Below.

No. ....

---

FELLOWSHIP PRESS, INC.,  
Petitioner and Appellant Below,

vs.

UNITED STATES OF AMERICA,  
Respondent and Appellee Below.

No. ....

---

JOINT AND SEPARATE PETITION FOR A WRIT OF  
CERTIORARI TO THE UNITED STATES CIRCUIT  
COURT OF APPEALS FOR THE SEVENTH CIR-  
CUIT

---

MAY IT PLEASE THE COURT:

Your petitioners jointly and separately respectfully  
show:

## SUMMARY STATEMENT OF THE MATTER INVOLVED

This is an action which was brought in the United States District Court for the Southern District of Indiana, Indianapolis Division, wherein the petitioners were indicted in twelve counts, the first eleven of which charge that petitioners violated the provisions of Section 33 of Title 50 of the United States Code (40 Stat. 219), (41 Stat. 1359), by publishing certain articles which were alleged to have been seditious, and in the twelfth count of indictment petitioners were charged with conspiring to violate the provisions of that Act.

The petitioners filed pleas in abatement asserting that the action should abate because that persons of the female sex having qualifications of grand jurors under law were excluded from the drawing of the grand jury and from the grand jury, contrary to the provisions of the United States Code Annotated, Title 28, Section 411 (Judicial Code, Section 275), and Title 28, Section 412, of the United States Code Annotated (Judicial Code, Section 276, amended); and because unauthorized persons were present in the grand jury room while the grand jury was in session and hearing the testimony of witnesses pertaining to this case. (Record pp. 66 to 69, incl.) Evidence on the plea in abatement was heard and the District Court overruled the plea and denied the same as to each of the petitioners, and the petitioners excepted. (Record p. 73.)

The petitioners then filed written demurrers to the indictment. (Record pp. 169 to 267, incl.) The District Court overruled the demurrers and the petitioners ex-

cepted. (Record p. 256.) The petitioners were arraigned and pleaded not guilty. (Record p. 257.) The petitioners then filed a motion for bill of particulars seeking to require the government to clarify the averments in the indictment. (Record pp. 257 to 262, incl.) The District Court overruled the motion for a bill of particulars and the petitioners excepted. (Record p. 263.)

The case was tried by a jury, which rendered a verdict finding petitioners Pelley and Fellowship Press, Inc. guilty on all twelve counts, and petitioner Brown guilty on the twelfth count only. (Record pp. 2 to 64; and pp. 600 to 601.) On the 12th day of August, 1942, the District Court entered a final judgment upon the verdict pronouncing the petitioners guilty according to the verdict, and sentenced and committed petitioner Pelley into the custody of the Attorney General of the United States or his authorized representative for imprisonment and confinement in an institution of the penitentiary type for a period of fifteen years; and sentenced and committed petitioner Brown into the custody of the Attorney General of the United States or his authorized representative for imprisonment and confinement in an institution of the penitentiary type for a period of five years; and fined the petitioner Fellowship Press, Inc. in the sum of Five Thousand Dollars. (Record pp. 601-602.)

From this judgment an appeal was duly prosecuted in the United States Circuit Court of Appeals for the Seventh Circuit, and on December 17, 1942, the Circuit Court of Appeals affirmed the judgments. This opinion is not reported to this date. (Record pp. 640 to 664, incl.)

The mandate of the Honorable Circuit Court of Appeals for the Seventh Circuit was issued and forwarded

to the Honorable District Court below upon December 31, 1942, and was recorded in the clerk's office of the Honorable District Court on the 2nd day of January, 1943, as shown by the certificate of the clerk of the District Court attached at the back of the record.

## II

### JURISDICTION

This is a criminal case wherein Final Judgment has been rendered on the merits and affirmed in the Circuit Court of Appeals for the Seventh Circuit.

The Final Judgment to be reviewed is dated August 12, 1942. (Record pp. 600-602.)

The decree of the Circuit Court of Appeals was rendered and entered on December 17, 1942. (Record pp. 646-664.)

The mandates of the Circuit Court of Appeals affirming the Final Judgment are dated December 31, 1942, and were filed and recorded in the office of the clerk of the District Court on January 2, 1943. (See certified copy of Mandates attached at back of Record.)

The jurisdiction of this Court is invoked under the statute, Section 240, Subdivision a, of the Judicial Code of the United States as amended by the Act of February 13, 1925, C-229 (43 Stat. 938; 28 U. S. C., Sec. 347; 28 U. S. C. A., Sec. 347, Subdivision a).

This petition for writ of certiorari was filed on January 12, 1943, and before the expiration of thirty days after the entry of judgment of the Circuit Court of Appeals.

Among other things this appeal involves the validity of the Act of Congress of June 30, 1906, Chapter 3935 (34 Stat. 816, 5 U. S. C. A. 310), which is in the following words: "The Attorney General or any officer of the Department of Justice, or any attorney or counselor specially appointed by the Attorney General under any provision of law, may, when thereunto specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which district attorneys may be by law authorized to conduct, whether or not he or they be residents of the district in which such proceeding is brought."

### III

#### REASONS RELIED UPON FOR THE ALLOWANCE OF THE WRIT

##### *A. The Pleas in Abatement*

1. When the Honorable District Court overruled petitioners' pleas in abatement, it decided a question of law contrary to and in contravention of Amendments Five and Nineteen to the Constitution of the United States; and in conflict with the applicable decisions of this Honorable Court, and the statutes of the United States.

*Glasser v. United States*, 62 Sup. Ct. Rep. 457;

*Hill v. State of Texas*, 62 Sup. Ct. 1159;

*Walter v. State*, 208 Ind. 231, 195 N. E. 268 at p. 270;

28 U. S. C. A. 411 (21 Stat. 43; 36 Stat. 1164);

28 U. S. C. A. 415 (21 Stat. 43; 36 Stat. 1165);

*Burns' Indiana Statutes Annotated* 1933, Section 4-3317.

2. In passing upon the pleas in abatement the Honorable Circuit Court of Appeals erred in deciding that there was no evidence that there were no names of women among those supplied and placed in the box from which the names of the grand jurors (who composed the grand jury which returned the indictment herein) were drawn. (Record pp. 265, 266, 274, 275, 276, 277, 278, 279 and 280.)

3. The Honorable Circuit Court of Appeals erred in deciding that there is a distinction between this case and cases where persons of defendants' race or creed were intentionally excluded from juries and that therefore no prejudice to the case of petitioners is shown or inferable.

Glasser v. United States, 315 U. S. 60, 62 Sup. Ct. Rep. 457;

Hill v. State of Texas, 316 U. S. 400, 62 S. C. Rep. 1159;

Tynan v. United States (C. C. A. 9), 297 Fed. 177 (Certiorari denied 266 U. S. 604);

Palmer v. State, 197 Ind. 625, 150 N. E. 917;

Burns' Ind. Statutes Annotated 1933, Sec. 4-3304;

Burns' Ind. Statutes Annotated 1933, Sec. 4-3317;

Walter v. State, 208 Ind. 231, 195 N. E. 268, 270;  
28 U. S. C. A. 411.

(a) This decision is in opposition to Amendment Five of the Constitution, because in effect it is held that even though certain classes of citizens are excluded from a grand jury, only those who belong to the excluded classes can complain of the exclusion. This constitutional provision demands an indictment by a properly constituted grand jury impartially selected according to due process of law,



and so as not to deny a citizen of the equal protection of the laws.

Walter v. State, 208 Ind. 231, 195 N. E. 268;

Duncan v. Missouri, 152 U. S. 377, 14 S. C. Rep. 570;

Arver v. United States, 245 U. S. 366, 38 S. C. Rep. 159;

Chicago Co. v. Chicago, 166 U. S. 226, 234, 17 S. C. Rep. 581.

(b) Due process of law means that grand juries should be impartially selected from citizens at large, without regard to race, creed, color or previous condition of servitude.

Neal v. Delaware, 103 U. S. 370, 26 L. Ed. 567.

(c) It should be presumed that petitioners were harmed by the exclusion of women from the grand jury, in the absence of a showing to the contrary, since their rights under the Constitution are exclusive and inalienable.

Constitution of the United States, Amendment Five;  
6 R. C. L. (Const. Law), Secs. 437, 438, 439, and  
440, Vol. 6, pp. 441 to 446, incl., and authorities  
cited in the footnotes thereto;

Ex Parte Wilson, 114 U. S. 417;

Ex Parte Bain, 121 U. S. 1.

4. Evidence that there resided in the district a large number of women who had qualifications necessary to have their names placed in the jury box to be drawn, and to sit as grand jurors on the grand jury (Record p. 265), and that jury commissioners who selected the grand jury which indicted petitioners did not go into the qualifications of the persons whose names they obtained and made

no special effort to ascertain whether those persons were men or women (Record p. 266) establishes discrimination in selection of grand jurors in violation of "equal protection of laws" provision of Federal Constitution.

United States Constitution, Amendment Fourteen;  
Hill v. State of Texas, 316 U. S. 400, 62 S. C. Rep.  
1159.

5. THE ACT OF CONGRESS OF JUNE 30, 1906,  
CHAPTER 3935 (34 Stat. 816, 5 U. S. C. A. 310), IS  
UNCONSTITUTIONAL.

The authority upon which the Honorable Circuit Court of Appeals founded its decision that the Assistant Attorney Generals were authorized to appear before the grand jury which returned the indictment herein and to participate during the grand jury investigation and deliberation was the Act of Congress of June 30, 1906, Chapter 3935 (34 Stat. 816, 5 U. S. C. A. 310).

This statute is in the following words: "The Attorney General or any officer of the Department of Justice, or any attorney or counselor specially appointed by the Attorney General under any provision of law, may, when thereunto specifically directed by the Attorney General, conduct any kind of legal proceeding, civil or criminal, including grand jury proceedings and proceedings before committing magistrates, which district attorneys may be by law authorized to conduct, whether or not he or they be residents of the district in which such proceeding is brought."

Only judicial officers could properly participate in an investigation by a grand jury (a judicial function) and the statute above referred to authorizing the attorney general (an executive officer) to appoint his assistants

to participate in grand jury proceedings is unconstitutional for the reason that said statute is a legislative provision attempting to authorize an invasion of the judiciary by the executive department, contrary to sections 1 and 2 of Article III of the Constitution of the United States.

Kilbourn v. Thompson, 103 U. S. 168, 26 L. Ed. 377;

Latham et al. v. United States (C. C. A. 5), 226 Fed. 420;

Revised Statutes 346, 5 U. S. C. A. 291;

United States Constitution Article 2, Section II;

United States v. Germaine, 99 U. S. 508, 511, 25 L. Ed. 482;

Fish v. United States, 36 Fed. 677;

United States v. Macdaniel, 7 Pet. 1, 8 L. Ed. 587;

Griffin et al. v. United States (C. C. A. 3), 295 Fed. 437;

United States v. Wells, et al. (D. C. of Idaho C. D.), 163 Fed. 313;

United States v. Rintelen, 235 Fed. 787;

United States v. Kilpatrick, 16 Fed. 765;

Sloop v. People, 45 Ill. App. 110;

United States v. Mitchell, 136 Fed. 896;

Gitchell v. State, 146 Ill. 175, 33 N. E. 757;

Williams v. State, 123 N. E. 209;

United States v. Haskell, 169 Fed. 449;

United States v. Goldman (D. C. Conn. 1928), 28 Fed. (2d) 424, at pages 426-431;

United States v. Edgerton (D. C. Mont. 1897), 80 Fed. 374, at page 375;

United States v. Heinze (C. C. N. Y. 1910), 177 Fed. 770, at pages 771-772;

Shushan v. United States (C. C. A. La. 1941), 117 Fed. (2d) 110, 133 A. L. R. 1040;  
 United States v. Rosenthal (C. C. N. Y. 1903), 121 Fed. 862, at pages 865 to 873;  
 United States v. Virginia-Carolina Chemical Co. (C. C. Term 1908), 163 Fed. 66, at pages 70 to 76;  
 Revised Statutes, Sec. 771 (28 U. S. C. A. 485);  
 Revised Statutes, Sec. 363 (5 U. S. C. A. 312);  
 Revised Statutes, Sec. 366 (5 U. S. C. A. 315);  
 United States v. Winston, 170 U. S. 522, 18 S. C. 701;  
 Wong Wing v. United States, 163 U. S. 228, 41 L. Ed. 140, 16 S. C. Rep. 977.

*B. The Demurrers to the Indictment*

1. The decision of the Honorable Circuit Court of Appeals in this case as to the sufficiency of the indictment is in conflict with the decision of the Circuit Court of Appeals for the Ninth Circuit on the same matter, in the cases decided by the Ninth Circuit entitled, *Foster et al. v. United States*, 253 Fed. 481, *Shilte v. United States*, 257 Fed. 724; and also with the decision of the Court of Appeals for the Eighth Circuit, on the same matter in a case decided by the Eighth Circuit, entitled *Martin v. United States*, 168 Fed. 198.

2. The decision of the Honorable District Court and the Honorable Circuit Court of Appeals in holding the indictment good against demurrers are in conflict with the decisions of this Honorable Court, with the decisions of several of the other Circuit Courts of Appeals, and in conflict with the Fifth and Sixth Amendments to the Constitution of the United States.

United States v. Cruikshank, 92 U. S. 542, 558;  
 United States v. Hess, 124 U. S. 483, 486;

- Armour Packing Company v. United States, 209  
 U. S. 56, 58, 83;  
 Frohwerk v. United States, 249 U. S. 204;  
 Pierce v. United States, 252 U. S. 239;  
 Keck v. United States, 172 U. S. 434;  
 Wong Tai v. United States, 273 U. S. 77;  
 Ledbetter v. United States, 170 U. S. 606, 610;  
 United States v. Simmons, 96 U. S. 360;  
 Evans v. United States, 153 U. S. 584;  
 United States v. Carll, 105 U. S. 611;  
 Foster, et al. v. United States (C. C. A. 9, 1918),  
 253 Fed. 481, pp. 482, 483;  
 Peters v. United States (C. C. A. 9, 1899), 94 Fed.  
 127 at p. 131;  
 Skelley v. United States (C. C. A. 10), 37 Fed. (2d)  
 503, 504;  
 Collins v. United States (C. C. A. 9), 253 Fed. 609,  
 611;  
 White v. United States (C. C. A. Okla.), 67 Fed.  
 (2d) 71, 78;  
 Shidler v. United States (C. C. A. Nev.), 257 Fed.  
 620, 622, 623;  
 Ackley v. United States (118 C. C. A. 403), 200  
 Fed. 217;  
 Martin v. United States (93 C. C. A. 484), 168 Fed.  
 198;  
 Knauer v. United States (150 C. C. A. 210), 237  
 Fed. 8;  
 United States v. Bopp (D. C.) 230 Fed. 723;  
 Fontana v. United States (C. C. A. 8), 262 Fed.  
 283, 286;  
 Heike v. United States, 227 U. S. 131;  
 Hart v. United States (C. C. A. 2), 240 Fed. 911, at  
 p. 916;

- Harvey v. United States (C. C. A. 2), 126 Fed. 357, 358;  
 United States ex rel. Jordan v. Glass (C. C. A. 3), 25 Fed. (2d) 941, 942, 943;  
 New York R. R. v. United States, 212 U. S. 481;  
 14A Corpus Juris, Sections 3049 to 3057, inclusive, and 2073;  
 13 Am. Jurisprudence, pp. 852, 876, to 878 inclusive, 884 to 888, inclusive (Sections 864, 897, 908, 912, and 914);  
 27 Am. Jurisprudence, pp. 562, 563, Section 55 and footnotes.

### *C. Bills of Particulars*

Except as stated in its opinion on the first nine counts of indictment (Record pp. 658-659), the Honorable Circuit Court of Appeals did not decide the question as to whether or not petitioners were entitled to a bill of particulars to clarify certain averments of the indictment. The petitioners were entitled to a bill of particulars since the District Court held the indictment good on demurrer. The various counts of indictment follow the language of the statute and were general in their terms, which renders them insufficient.

- Kirby v. United States, 174 U. S. 47;  
 Zoline Federal Criminal Law and Procedure 1921, Vol. 1, Chapter XXVI, Sec. 257, pp. 204, 206;  
 Foster v. United States (C. C. A. 9), 253 Fed. 481, 482, 483.

### *D. Admissibility of Certain Evidence*

1. The Honorable Circuit Court of Appeals did not decide the questions presented to it as to the admissibility of Government's Exhibits numbered 13, 15, 16, 17-A, 18,

20, 30, 33-A, 33-B, 33-C, 33-D, and 34, which were publications from the year 1933 to 1939. (Record pp. 308, 338, 497, 498, 505, 513.)

2. These Exhibits were not admissible as against either of these defendants for they were not relevant to any charge in the indictment and could not properly be considered as establishing a conspiracy which was not charged to have commenced until after December 8, 1941. They were not admissible against the petitioner Brown, who had nothing to do with these articles, nor against the Fellowship Press, Inc., which was not in existence at the time of any of these publications.

Wharton Criminal Evidence 1935, Vol. 1, Sections 222 to 227 inclusive, pp. 259-273, Sec. 241, pp. 282, 283, Sec. 244, pp. 284, 288; Vol. II, Sections 711, pp. 1197-1198, and authorities cited in the footnotes;

22 C. J. pp. 744-746, Sec. 835;

10 R. C. L. pp. 925, 926, Sec. 87;

Dealy v. United States, 152 U. S. 539.

3. Each of these Exhibits were in the nature of hearsay as against the petitioner Brown and petitioner Fellowship Press, Inc. It was not shown that either petitioners Brown or Fellowship Press, Inc., had any connection of any kind whatsoever with the writing, utterance, or publication of either of these exhibits. (Record pp. 291 and 299.)

4. The Honorable Circuit Court of Appeals erred in deciding that the testimony consisting of the conclusions of the Government's witnesses, Mrs. Persis Richter, Har-

old Graves, and Harold Laswell, was admissible as against the petitioners. (Record pp. 434 to 488 inclusive.)

Underhill Criminal Evidence (1923) (3d Ed.), Sections 168, 187, 188;

Davis v. Wood, 1 Wheat. 6, 4 L. Ed. 22, at page 22;

Boyd v. United States (1892), 142 U. S. 450, 453, 12 Sup. Ct. 292, at page 295;

22 C. J. (1920), pp. 741, 742 (Sec. 832).

WHEREFORE, Your petitioners each respectfully pray that a writ or writs of certiorari issue under the seal of this Court directed to the Circuit Court of Appeals for the Seventh Circuit, commanding said Court to certify and send to this Court a full and complete transcript of the record and of the proceedings of the Circuit Court of Appeals for the Seventh Circuit had in the case entitled on its docket, The United States of America, Plaintiff-Appellee v. William Dudley Pelley, Defendant-Appellant, numbered 8086; and had in the case entitled on its docket, The United States of America, Plaintiff-Appellee v. Lawrence A. Brown, Defendant-Appellant, numbered 8087; and had in the case entitled on its docket, The United States of America, Plaintiff-Appellee v. Fellowship Press, Inc., Defendant-Appellant, numbered 8088, to the end that those causes and each of them may be reviewed and determined by this Court, as provided by the Statutes of the United States; and that the judgments herein of the Circuit Court of Appeals for the Seventh Circuit, as well as the judgments herein of the District Court of the United States for the Southern District of Indiana, Indianapolis Division, deciding the various issues presented in these cases, be reversed by this Court, and for such



other and further relief as to this Court may seem just and proper.

Dated at Indianapolis, Indiana, January 12, 1943.

OSCAR F. SMITH,  
108 E. Washington Street,  
Indianapolis, Indiana;

FLOYD G. CHRISTIAN,  
19½ E. Logan Street,  
Noblesville, Indiana;  
*Counsel for Petitioners.*